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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,600	07/18/2003	Wayne McCullough	40031-6	4303
7590	02/01/2006			EXAMINER CARIASO, ALAN B
Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137			ART UNIT 2875	PAPER NUMBER
DATE MAILED: 02/01/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

AC

Office Action Summary	Application No.	Applicant(s)	
	10/622,600	MCCULLOUGH ET AL.	
	Examiner Alan Cariaso	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 January 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 2-7,9-11,15-17,20 and 21 is/are allowed.
- 6) Claim(s) 12-14 is/are rejected.
- 7) Claim(s) 18 and 19 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's response filed January 12, 2006 is acknowledged. Claims 2-7 and 9-21 are pending. Claims 1 and 8 are cancelled. Claims 2-7 are 9-12 amended. Claims 15-21 are newly submitted.
2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. However, in view of the amended claims (especially of claim 12) and newly cited art to EVANS et al, a new final rejection is set forth below.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by EVANS et al (US 5,604,813).
5. EVANS discloses a method of fitting a headset having ear cups (58,59) with hands-free illumination, comprising: forming a first set of at least one hole in at least one of said ear cups (58) (fig.9 shows any or both of the holes formed on the main surface of the ear cup shell 47, the holes being pointed and centered by sets of dotted vertical lines as viewed in fig.9), each of the holes in said first set (fig.9) being of a size adapted

to accommodate a lighting emitting diode (43); forming a second set of at least one hole in at least one of said ear cups (58) (fig.9 shows a pair of holes formed on a lateral surface facing parts 45 and 46, the holes being pointed and centered by sets of dotted horizontal lines as viewed in fig.9), each of the holes in said second set being of a size adapted to accommodate a switch (10, 45); installing at least one light-emitting diode (43) in at least one of the holes in said first set (top holes fig.9); installing at least one switch in at least one of the holes in said second set (lateral holes fig.9); connecting one or more conductors (printed circuit board 40) between said at least one switch (10, 45) and said at least one light-emitting diode (43); providing a power source (2, fig.8); and conductively connecting (via wiring 55, fig.11) said power source (2) to said at least one switch (10, col.4, lines 18-20); wherein said providing step includes attaching a battery holder (latch portion 6 with latch 11, fig.8, col.3, lines 1-3 and lines 58-60) in or on one of said ear cups (59, fig.8).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over EVANS et al (US 5,604,813) in view of EICHOST (US 4,969,069).

8. EVANS discloses the claimed invention including an opening (under or adjacent latch portion 6, fig.8) provided in one of said ear cups (59). However, EVANS does not disclose providing a conductor adapted to be connected to a power source at a distance from said ear cup, and wherein said connected step includes connecting said conductor through said opening to said at least one switch (10, 45).

9. EICHOST teaches a conductor (power cord 16 in fig.1 or cable 40 in fig.2) connected to a power source at a distance (col.2, lines 45-55) from the ear cup and connecting the conductor (16 or 40) through the opening (17 in fig.1 or receiving opening for prong 39 in fig.2) to the switch (15, fig.1) for the purpose of providing power to the lights or ear set circuit parts from a power source at a distance (on the belt) from the ear set to match the electrical system output voltage to the voltage of the lights.

10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify head set device of EVANS et al to include providing a conductor connected to a power source at a distance from the ear cup and connecting the conductor through the opening of the ear cup to the switch as taught by EICHOST in order to accommodate a different battery (in size or shape or volts) that may not fit the internal battery holder to match the electrical system output voltage of the lights and other ear set load parts.

Allowable Subject Matter

11. Claims 2-7, 9-11, 15-17, 20 and 21 are allowed.

12. Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record suggests the headset having: at least one switch including a first on position permitting at least said first diode set to illuminate and a second on position permitting at least said second diode set to illuminate in combination with the headset, the at least one light-emitting diode attached to a first of said ear cups and at least one light-emitting diode attached to a second of said ear cups; a drilling template indicating positions for drilling holes placed adjacent to the ear cups; said plurality of light-emitting diodes includes at least two white light-emitting diodes and two red light-emitting diodes; method of fitting the headset by forming first or second set of at least one hole includes drilling at least one hole.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan Cariaso
Primary Examiner
Art Unit 2875

January 30, 2006
AC